

The Parties agree as follows:

City Purchasing Agent City of Houston P.O. Box 1562 Houston, Texas 77251 Phone: 1-800-573-3160	Fax: 214-750-9513 P.O. Box 251002 Plano, TX 75025 - 1002 Phone: 1-800-573-3160	Fax: 214-750-9513 P.O. Box 251002 Swagit Productions, LLC City of Houston P.O. Box 1562 Houston, Texas 77251 Phone: 1-800-573-3160
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City \_\_\_\_\_  
Contractor

the other party, are as follows:

The initial addresses of the parties, which one party may change by giving written notice to

("Contractor"), a Texas limited liability company.

**HOUSTON, TEXAS ("City")**, a municipal corporation, and **SWAGIT PRODUCTIONS, LLC**

**CHANNEL** ("Agreement") is made on the CounterSignature Date between the **CITY OF**

**THIS AGREEMENT FOR STREAMING SERVICES FOR THE MUNICIPAL**

A. Address

## 1. PARTIES

<b>THE STATE OF TEXAS §</b> <b>COUNTY OF HARRIS §</b>	<b>§</b>
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07-0980  
460008328

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If a conflict among the sections and exhibits arises, the sections control over the exhibits.

#### D. Controlling Parts

The above described exhibits are incorporated into this Agreement.

#### C. Parts Incorporated

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## CITY OF HOUSTON, TEXAS

The Parties have executed this Agreement in multiple copies, each of which is an original.

E. Signatures

SWAGIT PRODUCTIONS, LLC

ATTEST/SEAL (if a corporation)  
Witness (if not a corporation)

By: James Williams  
Name: James Williams  
Title: President

APPROVED:  
James Williams

City Purchasing Agent  
By: Nancy Irvine

APPROVED AS TO FORM:  
Mary Louann  
City Attorney  
By: Mary Louann  
Title: Assistant City Attorney  
L.D. No. 0340700169001

DATE COUNTERSIGNED:

COUNTERSIGNED BY:

City Secretary

ATTEST/SEAL:

By: Bob Wolfe  
Signature

Mayor

ATTEST/SEAL:

City Secretary

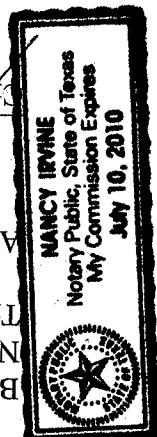
By: Mark Williams  
Signature

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

8-10-07



is used.

and instructions for using the software to obtain desired results from a software system on which it software, Extensible Automated Streaming Engine (EASE) software program's design, operations "Documentation" means the manual provided by Contractor detailing its proprietary

improvements to them) that Contractor prepares or provides under this Agreement.

original tracings of all drawings and plans, and other work products (and any modifications or exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the "Documents" mean notes, manuals, notebooks, plans, computations, databases, tabulations,

Agent, or the person he or she designates.

"Director" means the Director of the Municipal Channel Division or the City Purchasing

page of this Agreement.

"Countersignature Date" means the date shown as the date countersigned on the signature

assigments.

"Contractor" is defined in the preamble of this Agreement and includes its successors and

"City" is defined in the preamble of this Agreement and includes its successors and assigments.

amendments authorized by City Council and Contractor.

"Agreement" means this contract between the Parties, including all exhibits and any written works according to Contractor's Documentation as set out in Section IV(E) of this Agreement hardware configured for the same under this Agreement to ascertain that the Streaming Solution

"Acceptance" means approving the Streaming Solution after testing the software and

As used in this Agreement, the following terms have the meanings set out below:

## II. DEFINITIONS

all labor, material, and supervision necessary to perform the services described in Exhibit "A".

(1) In consideration of the payments specified in this Agreement, Contractor shall provide

#### A. Scope of Services

### III. DUTIES OF CONTRACTOR

public access channels on its website for access by City end-users.

own proprietary encoding software to allow City to stream its meetings and other content from its under this Agreement, with Contractor configuring the third party hardware and software with its "Streaming Solution" means the customized hands off solution being provided by Contractor

and system administrators in the use of new video streaming formats.

"Services" mean video streaming related services such as training end-users, web developers

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

Instructioning Contractor to begin performance.

"Notice to Proceed" means a written communication from the Director to Contractor

the words "without limitation".

"Include" and "including", and words of similar import, shall be deemed to be followed by

"Formats" mean streaming video formats.

such City end-users to stored content from a library of programs from the public access channels.

television channels to its website for access by City end-users and to provide on-demand access to

with a hands-off solution to allow City to stream content from its broadcasts on its public access

encoding software being licensed to City under this Agreement to enable Contractor to provide City

"Extensible Automated Streaming Engine" or "EASE" means Contractor's proprietary

PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO  
 "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO  
 EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE  
 CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS,

#### **D. RELEASE**

under the M/WBE subcontract.

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to make these payments. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

#### **C. Payment of Subcontractors**

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other persons that the Director shall coordinate its performance with the Director and other persons that the Director designates.

#### **B. Coordinate Performance**

City content broadcast on City's public access channel as set out in this Agreement. (3) During the term of this Agreement, Contractor shall provide the City with updates and feature enhancements to its EASE software program whenever such updates and feature enhancements become available.

(2) Contractor shall grant the City a non-exclusive, non-transferable perpetual license to use Contractor's Extensible Automated Streaming Engine (EASE) encoder software to stream City content broadcast on City's public access channel as set out in this Agreement.

(1) CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITYES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY: CONTRACTOR'S AND/OR ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, SUBCONTRACTORS, ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT LIABILITY.

OMISSIONS;

(2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT LIABILITY.

(3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT LIABILITY.

#### E. INDEMNIFICATION

STATUTORY LIABILITY.

NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT LIABILITY, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT DAMAGE, EVEN IF THE INJURY, DEATH, PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH,

DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.  
PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND  
CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH  
INTEREST) AND DAMAGES AWARDED.  
ATTORNEYS, FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND  
CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION,  
COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET,  
FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGEMENTS ON A PATENT,  
USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR  
CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S  
REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR  
HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL  
CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD  
TRADE SECRET INFRINGEMENT

E. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND  
THE CITY FOR THE CITY'S SOLE NEGLIGENCE.  
LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY  
AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS  
HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS  
CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY  
WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.  
PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY,

indemnification or a different amount of indemnified loss than that indicated in the initial notice.

This notice does not stop or prevent the City from later asserting a different basis for

- (c) the anticipated amount of the indemnified loss.

- (b) the basis on which indemnification may be due, and

- (a) a description of the indemnification event in reasonable detail,

notice to the other party within 10 days. The notice must include the following:

circumstances which could give rise to an indemnified loss, the receiving party shall give written

(1) **Notice of Claims.** If the City or Contractor receives notice of any claim or

#### **H. INDEMNIFICATION - PROCEDURES**

##### **INDEMNITY TO THE CITY.**

SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND  
 THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE  
 CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND

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#### **G. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY**

CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND  
 ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE  
 AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE  
 (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE  
 CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR,  
 SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO  
 WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR

except Professional Liability and Workers' Compensation must name the City as an additional insurance, in duplicate form, before beginning its performance under this Agreement. All policies Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of

### I. Insurance

bound by the settlement.

and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise the City to pay amounts that Contractor does not find in full, (iii) would not result in the City's full the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require any settlement negotiations. Contractor may settle the claim without the consent or agreement of separate counsel to participate in (but not control) the defense and to participate in (but not control) (b) Continued Participation. If Contractor elects to defend the claim, the City may retain defense, and all defense expenses constitute an indemnification loss.

defend the claim. If Contractor does not assume the defense, the City shall assume and control the notice of the indemnification request, Contractor must advise the City as to whether or not it will control the defense and any negotiations to settle the claim. Within 10 days after receiving written expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then (a) Assumption of Defense. Contractor may assume the defense of the claim at its own

### (2) Defense of Claims

because of the delay.

indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense If the City does not provide this notice within the 10 day period, it does not waive any right to

comply with this requirement, the Director, at his or her sole discretion, may change, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not Contractor shall provide other suitable policies in lieu of those about to be canceled, materially before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, City waives any rights of subrogation against the City, and that it shall give 30 days written notice to the All insurance policies must require on their face, or by endorsement, that the insurance carrier unless otherwise indicated.

Aggregate Limits are per 12-month policy period  
Defense costs are excluded from the face amount of the policy.  
• \$1,000,000 combined single limit

(4) Automobile Liability insurance

• \$1,000,000 per occurrence; \$1,000,000 aggregate

(3) Professional Liability

• Statutory amount

(2) Workers' Compensation including Broad Form All States endorsement:

• \$500,000 per occurrence; \$1,000,000 aggregate

(1) Commercial General Liability insurance including Contractual Liability insurance:

coverages in the following amounts:

the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance

against such manufacturers or licensors related to such hardware or software pursuant to such of the hardware purchased for the City under this Agreement, and assist City in any warranty claims licensee of the Third Party Software licensed to City under this Agreement and the manufacturers under this Agreement, Contractor shall provide the City with warranties, if any, provided by the With respect to the software and hardware (listed in Exhibit "B") that Contractor furnishes

#### K. Third Party Hardware and Software Warranties

(4) that no item or its use infringes any U.S. patent, copyright, or proprietary right,

item which it replaces (when the replaced item was new), and

manufacturer's specifications, and of a quality at least as good as the quality of the

(3) that each replacement item is new, in accordance with original equipment

(2) that each item shall perform in accordance with Documentation,

(1) that all items are free of defects in title, design, material and workmanship,

With respect to any parts and goods it furnishes, Contractor warrants:

the work required under this Agreement.

shall perform all work using trained and skilled persons having substantial experience performing

meeting the standards of quality prevailing in Harris County, Texas for work of its kind. Contractor

Contractor warrants that it shall perform all work in a good and workmanlike manner,

#### J. Warranties

premiums from amounts due to Contractor under this Agreement.

(2) purchase the required insurance with City funds and deduct the cost of the

Agreement and begin procedures to terminate for default, or

(1) immediately suspend Contractor from any further performance under this

his or her license.

immediately notify the Director of any suspension, revocation, or other detrimental action against all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall obtain all professional licenses required by all statutes, permits, and certificates including Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including

#### N. Licenses and Permits

performance under this Agreement.

original Documents, and all other files and materials Contractor produces or gathers during its five working days after this Agreement terminates, Contractor shall deliver to the Director the five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents to the Director on request. Within

(3) Contractor shall deliver the original Documents to the Director on request. Within

(2) Contractor warrants that it owns the copyright to the Documents.

Contractor prepares or obtains under this Agreement.

photographs, reports, underlying data and other work products (collectively, the "Documents") that (1) The City may use all notes, plans, computations, databases, tabulations, exhibits,

#### M. Use of Work Products - City may use all documents

subcontractors which bind them to the terms in this Section.

it in writing; Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the information unless the Director authorizes have access, in strictest confidence. Contractor, its agents, employees, contractors, and information, data, and documents (collectively, "the Information") that they receive, or to which they

Contractor, its agents, employees, contractors, and subcontractors shall hold all City

#### L. Confidentiality - Protection of City's Interest

warranty terms during the term of this Agreement.

- Impact Positions, substantially in the form set forth in Exhibit "F."
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions
- (a) a copy of its drug-free workplace policy,
- Compliance Officer for Drug Testing ("CCODT"):
- (2) Before the City signs this Agreement, Contractor shall file with the Contract Agreement and is on file in the City Secretary's Office.
- Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for contractors while on City Premises is prohibited. Contractor shall comply with all the requirements manufacturer, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by
- (1) It is the policy of the City to achieve a drug-free workforce and workplace. The
- Q. Drug Abuse Detection and Deterrence
- in Exhibit "C".
- Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out
- P. Compliance with Equal Opportunity Ordinance
- City Charter and Code of Ordinances.
- Contractor shall comply with all applicable state and federal laws and regulations and the
- O. Compliance with Laws

- In the event the Director makes Contractor a written request for streaming additional meetings in a month than the ten meetings covered by the monthly recurring fee of \$1,500.00, then, subject to the allocation of funds as set out in Section IV(G) below, City shall pay and Contractor shall accept a fee monthly recurring fee of \$1,500.00 shall remain in effect for the term of this Agreement.
- beginning the month following the date the City Accepts Contractor's Streaming Solution. The monthly recurring fee of \$1,500.00 shall remain in effect for the term of this Agreement.
- (1) During the term of this Agreement and subject to the allocation of funds as set out in Section IV(G) below, City shall pay and Contractor shall accept a monthly recurring fee of \$1,500.00 beginning the month following the date the City Accepts Contractor's Streaming Solution. The monthly recurring fee of \$1,500.00 shall remain in effect for the term of this Agreement.

#### A. Payment Terms

### IV. DUTIES OF THE CITY

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- Contractor shall secure and maintain the required documents for City inspection.
- (4) Contractor shall require that its subcontractors comply with the Executive Order, and CCO DT if additional safety impact positions are added to Contractor's employee work force.
- (3) Contractor also shall file updated designations of safety impact positions with the day Contractor begins work under this Agreement.
- to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first performance and within 30 days of completion of this Agreement. The first 6-month period begins Compliance Declaration to the CCO DT within 30 days of the expiration of each 6-month period of Declaration in a form substantially similar to Exhibit "E." Contractor shall submit the Drug Policy Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance If Contractor files a written designation of safety impact positions with its Drug Policy Compliance

means the date on which Contractor receives written notification for additional Formats or Services. In writing for such additional Formats or Services. For purposes of this section, the "Effective Date" at the rates the parties negotiate and agree upon in writing at the time the Director requests Contractor Agreement, then Contractor shall provide additional Formats or Services requested by the Director requests Contractor in writing for additional Formats or Services not listed in Exhibit "A" of this Services in addition to the Formats or Services detailed in Exhibit "A". In the event the Director Formats or Services, the Director has the option to request Contractor in writing for such Formats or Services in the term of this Agreement, in the event Contractor offers other comparable or newer use of its EASE software program under this Agreement.

#### B. Addition of Formats or Services

(3) Upon Acceptance of the Streaming Solution as set out in Section IV(F) below, City shall pay item of hardware and software listed in Exhibit "B" upon delivery of such items to the City. and Contractor shall accept the software license fee of \$3,925.00 for the license granted to City for use of its EASE software program under this Agreement.

(2) City shall pay and Contractor shall accept the one-time costs listed in Exhibit "B" for each remain in effect for the term of this Agreement.

Subject to the allocation of funds as set out in Section IV(G) below, the Director also has the option to request Contractor in writing for any additional video editing or encoding services, and custom software development and web design services at the hourly rates set out for such professional services. The hourly rates set out in Exhibit "B" for the professional services detailed above shall services. The hourly rates set out in Exhibit "B" for the professional services detailed above shall remain in effect for the term of this Agreement.

Upon the Director's written request, shall remain in effect for the term of this Agreement. request. The per meeting streaming fee of \$70.00 for each additional meeting streamed by Contractor of \$70.00 for each additional meeting streamed that month in accordance with the Director's written

#### F. Acceptance of Streaming Solution

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

#### E. Method of Payment - Disputed Payments

City shall pay Contractor the monthly recurring fee on the basis of invoices submitted by Contractor and approved by the Director showing the monthly meetings streamed in the previous month. City shall pay and Contractor shall accept the per item costs listed in Exhibit "B" upon delivery of each item, except that the license fee for the EASE software is payable upon Acceptance as set out in Section IV(F). City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

#### D. Method of Payment

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

#### C. Taxes

As of the Effective Date, each Format or Service that is added is subject to this Agreement, as if it had originally been a part of this Agreement, but the charge for each Format or Service starts to accrue only on the Effective Date.

beginning promptly after completing the configuration of its Streaming Solution, the City shall operate the Streaming Solution for 30 days (the "Trial Period"), with Contractor providing support services via its telephone number (800) 573-3160 or its e-mail, support@swagit.com. If during the Trial Period, the tests the City conducts indicate that the Streaming Solution is not performing in accordance with Contractor's Documentation or the requirements of this Agreement, Contractor will have 30 days to correct the problem(s), at which time the City will have an additional 15 days to retest the corrections. The City shall notify Contractor of any non-conformity between the performance of the Streaming Solution and its Documentation and provide documentation of the non-conformity to Contractor as soon as practicable after discovery. The City shall accept the Streaming Solution when: (i) the Streaming Solution and related Documentation have been completely delivered and installed, and (ii) the Streaming Solution has, by the end of the 30-day Trial Period, successfully operated in accordance with Contractor's Documentation and the requirements of this Agreement. The City shall reject the Streaming Solution if at the end of the 30-day Trial Period (plus any time the City provides to Contractor to correct defects), the Streaming Solution has not performed in accordance with Contractor's Documentation, and Contractor is unable to correct the deficiency.

If the City rejects the Streaming Solution, it will be returned to Contractor at no cost to the City and the City will not pay for the use of the Streaming Solution or any other applicable goods or services under this Agreement. Contractor shall return to the City all sums paid to it under this Agreement within 30 days of rejection of the Streaming Solution. The City reserves all other available rights at law or in equity.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$ \_\_\_\_\_, upon the request of the Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

City Controller on (Date of Countersignature) (the "Agreement").  
Agreement" between the City and (name of Contractor) countersigned by the  
SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this

DATE: [Date of notice]

FROM: City of Houston, Texas (the "City")

TO: [Name of Contractor]

### "NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

below, approved by motion or ordinance of City Council in substantially the following form:

and the City Controller to Contractor and, where in excess of the amount specified in Paragraph (4)

(3) The City makes a supplemental allocation by sending a notice signed by the Director

procedures and remedies:

Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following

legislative officers of the City, in their discretion, may allocate supplemental funds for this

\$24,666.00 to pay money due under this Agreement (the "Original Allocation"). The executive and

XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article

limited in its entirety by the provisions of this Section.

(1) The City's duty to pay money to Contractor for any purpose under this Agreement is

G. Limit of Appropriation

same terms and conditions. If the Director or the City chooses not to renew this Agreement, the allocations, this Agreement will be automatically renewed for two successive one year terms on the \_\_\_\_\_Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental

#### B. Renewals

unless sooner terminated under this Agreement (the "Initial Term").  
This Agreement is effective on the CounterSignature Date and remains in effect for three years

#### A. Contract Term

### V. TERM AND TERMINATION

City and no right to damages of any kind.

of its performance under this Agreement, and it has no other remedy in law or in equity against the  
it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination  
Funds. Contractor must assure itself that sufficient allocations have been made to pay for services  
The City shall never be obligated to pay any money under this Agreement in excess of the Allocated  
(5) The Original Allocation plus all supplemental allocations are the Allocated Funds.

supplemental allocations for this Agreement without returning to Council.

(4) City Council delegates to the Director the authority to approve up to \$75,000.00 in

Director  
(Signature of the Director)

REQUESTED:

City Controller of the City  
(Signature of the City Controller)

SIGNED:

\$

If Contractor defaults under this Agreement, the Director may either terminate this Agreement

**D. Termination for Cause**

**TERMINATION FOR CONVENIENCE.**

FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S PAYMENT SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS RENEWED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES

allocated funds remaining under this Agreement.

but not already paid for, in the same manner as prescribed in Section IV, A unless the fees exceed the to the termination date. The City shall then pay the fees to Contractor for services actually performed, Contractor shall submit an invoice showing in detail the services performed under this Agreement up chargeable to this Agreement. As soon as practicable after receiving the termination notice, discontinue all services under this Agreement and cancel all existing orders and subcontracts that are On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately

and remedies which exist now or in the future.

Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights

The Director may terminate this Agreement at any time by giving 30 days written notice to

**C. Termination for Convenience by City**

current term.

Director shall notify Contractor of non-renewal at least 30 days before the expiration of the then-

but not limited to: the withholding of income, social security, and other payroll taxes and all workers' purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including any of its employees or subcontractors and not the City's employees, agents, or subcontractors for any method of Contractor's performance under this Agreement. All personnel Contractor uses or provides Agreement in that capacity. The City has no control or supervisory powers over the manner or Contractor is an independent contractor and shall perform the services provided for in this

#### A. Independent Contractor

### VI. MISCELLANEOUS

may terminate this Agreement on the termination date, at no further obligation of the City. is ineffective. If Contractor does not cure the default before the termination date, then the Director and Contractor does so to the Director's satisfaction before the termination date, then the termination may extend the termination date to a later date. If the Director allows Contractor to cure the default Contractor describing the default and the termination date. The Director, at his or her sole option, If default occurs, the Director may, but is not obligated to, deliver a written notice to

- (4) a receiver or trustee is appointed for Contractor.

creditors; or

- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its

- (2) Contractor becomes insolvent;

- (1) Contractor fails to perform any of its duties under this Agreement;

future. Default by Contractor occurs if:

Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the or allow Contractor to cure the default as provided below. The City's right to terminate this

is final.

Contractor has occurred and render a written decision within 14 days. The decision of the Director Contractor will review claims that a Force Majereue that directly impacts the City or

anticipate effect.

(b) provides the other party with prompt written notice of the cause and its

possible and to continue performance notwithstanding the Force Majereue; and

(a) uses due diligence to remove the effects of the Force Majereue as quickly as

2. This relief is not applicable unless the affected party does the following:

does not entitle Contractor to extra Reimbursement Expenses or payment.

or an event that merely makes performance more difficult, expensive or impractical. Force Majereue conditions such as infiltration, interest rates, economic downturn or other factors of general application; the exercise of reasonable diligence. The term does not include any changes in general economic of superior governmental or military authority, and which the affected party is unable to prevent by

explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters,

complete performance under this Agreement. Force Majereue means: fires, interruption of utility Contractor may permit a reasonable delay in performance but does not excuse a party's obligations to

the delay is caused by Force Majereue that directly impacts the City or Contractor. The event of Force

party is liable for reasonable delays in performing its obligations under this Agreement to the extent

1. Timely performance by both parties is essential to this Agreement. However, neither

## B. Force Majereue

compensation benefits coverage.

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances,

#### F. Applicable Laws

specifically delegated to him or her in this Agreement.

the City Council) and Contractor. The Director is only authorized to perform the functions only by written instrument executed on behalf of the City (by authority of an ordinance adopted by \_\_\_\_\_ Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended

#### E. Written Amendment

or implied), or other terms of any kind, exist between the Parties regarding this Agreement. This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express

#### D. Entire Agreement

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

#### C. Severability

UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.  
FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT  
CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING  
This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY

affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor.  
5. If the Force Majeure continues for more than 10 days from the date performance is

of Force Majeure. Such performance is not a default or breach of this Agreement by the City.  
4. The City may perform contract functions itself or contract them out during periods

Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to approve any part of An approval by the Director, or by any other employee or agent of the City, of any part of

other's breach of a term, that waiver does not waive a later breach of this Agreement. If either party waives the not prevent the party from later enforcing that term and all other terms. If either party waives the If either party fails to require the other to perform a term of this Agreement, that failure does

#### I. Non-Waiver

Agreement.

constructing this Agreement. The captions are not restrictive of the subject matter of any section in this Captions contained in this Agreement are for reference only, and therefore, have no effect in

#### H. Captions

notice.

proper notice to the sending party. Postage or delivery charges must be paid by the party giving the in Section I of this Agreement or other address the receiving party has designated previously by service. The notice must be addressed to the party to whom the notice is given at its address set out Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery facsimile, United States registered or certified mail, return receipt requested, United States Express All notices to either party to the Agreement must be in writing and must be delivered by hand,

#### G. Notices

Venue for any litigation relating to this Agreement is Harris County, Texas.

body or officer having jurisdiction.

the laws of the federal government of the United States, and all rules and regulations of any regulatory

Contractor shall make no announcement or release of information concerning this Agreement

#### N. Publicity

but not limited to, the indemnity provisions.

expressly or by their nature extend beyond the expiration or termination of this Agreement, including Contractor shall remain obligated to the City under all clauses of this Agreement that

#### M. Survival

on the basis that the party did or did not write it.

If any term of this Agreement is ambiguous, it shall not be construed for or against any party

#### L. Ambiguities

regulation.

Agreement, with the exception of those documents made confidential by federal or State law or Agreement that the City Attorney requests to assist in determining Contractors compliance with this and records that the City Attorney may further authorize. Contractor shall provide to the City Attorney all documents Agreement without further authorization. Contractor shall enforce all legal rights and obligations under this

The City Attorney or his or her designee may enforce all legal rights and obligations under this

#### K. Enforcement

after this Agreement terminates. This provision does not affect the applicable statute of limitations. Agreement, Contractor shall keep its books and records available for this purpose for at least 4 years records, and (2) inspections of all places where work is undertaken in connection with this City representatives may perform, or have performed, (1) audits of Contractors books and

#### J. Inspections and Audits

to vary the terms of this Agreement.

or in the future. Neither party may terminate its duties under this Agreement except in accordance with this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now and unless otherwise specified elsewhere in this Agreement, the rights and remedies contained

#### R. Remedies Cumulative

Director's prior written consent.

Contractor shall not delegate any portion of its performance under this Agreement without the number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Contractor shall immediately furnish the City with proof of the assignment and the name, telephone described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, however, prevents the assignment of accounts receivable or the creation of a security interest as substantially all of its assets without the Director's prior written consent. Nothing in this clause, Contractor shall not assign this Agreement at law or otherwise or dispose of all or

#### Q. Business Structure and Assignments

of any officer or agent of the City.

set out in the following paragraph. This Agreement does not create any personal liability on the part assigns; however, this provision does not alter the restrictions on assignment and disposal of assets. This Agreement binds and benefits the Parties and their legal successors and permitted

#### P. Successors and Assigns

City and Contractor only.

This Agreement does not bestow any rights upon any third party, but binds and benefits the

#### O. Parties In Interest

unless the release has been submitted to and approved, in writing, by the Director.

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

S. CONTRACTOR DEBT

with its provisions.

Quick Time and Real streaming. Contractor shall also provide the City with a compressed

ready for further compression into a variety of formats such as Flash, Windows Media, ensure that the content stored City's HTV channel is of broadcast quality, MPEG-2 video hardware listed in Exhibit "B", deploy its EASE encoder software on such hardware and

4) In consultation with the Director, Contractor shall purchase, install and configure the to provide the City with its hands-off video streaming solution.

Exhibit "B" of this Agreement and deploy its EASE encoding software on such hardware Contractor shall purchase the computing hardware proposed by Contractor and listed in

SwagTrk Content Network.  
available by City to enable City to stream media from content stored externally on the service for City end-users depends upon the sufficiency of Internet connectivity made deliver, on its own content network. City understands that the quality of streaming that requires extensive disk storage space or that may require a lot of bandwidth to Contractor shall minimize the impact on the City's network by storing all City content

streaming on the City's HTV website, [www.htv.com](http://www.htv.com).

programs the City now broadcasts on its public access channel ("HTV" channel) for Council Meetings, City Council Committee Meetings and selected public interest Engine ("EASE") software on the City's hardware to record and store content from City video streaming solution by deploying its proprietary Extensible Automated Streaming

Contractor shall function as a service provider by providing the City with its hands-off

## SCOPE OF SERVICES

### EXHIBIT "A"

- (5) Contractor shall configure its EASE encoder to allow for all recorded City content to be transferred to its Swagit Content Network via a secure Virtual Private Network (VPN) connection, making it available for on-demand streaming. Once City content is transferred to Contractor's Swagit Content Network, Contractor shall provide the City with the following services:
- a. Indexing of all City content according to published meeting agendas or special instructions, if any, from the Director;
  - b. Annotations to all City content by adding jump-to-points and specific item headings to help end-users find the content with ease;
  - c. Packaging of all City content in a user-friendly format to allow for easy searching of specific items by clicking on a video index or by using links from printed information published on the City web-site;
  - d. File Transfer Protocol (FTP) access to a secure area in which City IT staff may upload any audio/video files;
  - e. At the instructions of the Director, encoding of uploaded files as set out in (d)
  - f. Free access to a selection of rich-media content from the Navy/Marines, Air Force and Army for inclusion at the institutions of the Director in City content for reference or linking of City content already in storage with forthcoming broadcasts or new City content materials; and
  - g. referencing by City as part of special events, streaming by City as part of special events,
- (6) Master file from the video server, which the City may back up with a DVD or any other preferred format.

- 7) During the term of the Agreement, Contractor shall provide the City with a minimum of 40GB of storage space on its Swaggit Content Network to enable the City to store 18 months of City content on its network. Contractor understands that the City is subject to the Texas Public Information Act and therefore Contractor shall provide the City with a DVD of all City content before purging such content from its Swaggit Content Network. In consultation with the Director, Contractor shall work with City IT staff to provide a link from the City website [www.htv.com](http://www.htv.com) to the library of City content encoded by Contractor under this Agreement. During the term of this Agreement, Contractor shall ensure that new City content is automatically added to the City library and make the updated library accessible to City end-users through a link on the City website.
- 8) In consultation with the Director, Contractor shall work with City IT staff to provide a link from the City website [www.htv.com](http://www.htv.com) to the library of City content encoded by Contractor under this Agreement. During the term of this Agreement, Contractor shall provide the City with a DVD of all City content before purging such content from its Swaggit Content Network. The Texas Public Information Act and therefore Contractor shall provide the City with a link from the City website [www.htv.com](http://www.htv.com) to the library of City content encoded by Contractor under this Agreement. During the term of this Agreement, Contractor shall work with City IT staff to provide a link from the City website [www.htv.com](http://www.htv.com) to the library of City content encoded by Contractor under this Agreement. During the term of this Agreement, Contractor shall work with City IT staff to provide a link from the City website [www.htv.com](http://www.htv.com) to the library of City content encoded by Contractor under this Agreement.
- 9) Contractor shall provide on-demand City content in streaming video formats that are compatible with major computer operating systems in order to ensure that City end-users using a variety of internet connections from high speed DSL, cable or fiber or low bandwidth mobile devices will be able to access such content through a link on the City website. Contractor shall also provide City specialty content in a format suitable for website. Contractor shall deliver City content using the Macromedia Flash based delivery system podcasts.
- 10) Contractor shall deliver City content using the Macromedia Flash based delivery system to allow City end-users to take City content and embed it in their own web-sites or blogs to allow City end-users to take City content and embed it in their own web-sites or blogs for no-click access by other website users or bloggers.
- 11) Contractor shall constantly monitor its Swaggit Content Network and the EASE encoders for no-click access by other website users or bloggers.

- Contractor about the problem.
- malfunctioning hardware part within one business day from the date the Director notified hardware is malfunctioning. Contractor's technician shall replace or repair the hardware under this Agreement within one business day of being notified by the Director that the Contractor shall dispatch a trained technician to make repairs to the hardware installed and upon the Director's notification that City has trouble accessing City content. Contractors to troubleshoot in the event the encoders on City hardware are malfunctioning technicians to troubleshoot in the event the encoders on City hardware are malfunctioning support 24 hours a day, seven days of the week by promptly dispatching trained support 24 hours a day, seven days of the week by promptly dispatching trained technicians. During the term of this Agreement, Contractor shall provide the City with technical content with ease and troubleshoot when City end-users have problems viewing City content to record City content to ensure that City end-users are able to access City deployed to record City content to ensure that City end-users are able to access City content with ease and troubleshoot when City end-users have problems viewing City content.
- 12) During the term of this Agreement, Contractor shall provide the City with technical support 24 hours a day, seven days of the week by promptly dispatching trained technicians to troubleshoot in the event the encoders on City hardware are malfunctioning support 24 hours a day, seven days of the week by promptly dispatching trained technicians. Contractors to troubleshoot in the event the encoders on City hardware are malfunctioning technicians to troubleshoot in the event the encoders on City hardware are malfunctioning support 24 hours a day, seven days of the week by promptly dispatching trained technicians. During the term of this Agreement, Contractor shall provide the City with technical content with ease and troubleshoot when City end-users have problems viewing City content to record City content to ensure that City end-users are able to access City deployed to record City content to ensure that City end-users are able to access City content with ease and troubleshoot when City end-users have problems viewing City content.

RECURRING COSTS FOR STREAMING SOLUTION		Non Recurring Costs	
LIST & PRICE OF HARDWARE, SOFTWARE, PROFESSIONAL SERVICES & SERVER HARDWARE (City has option to supply server)			
1. Dell Tower Server - PowerEdge SC440	\$ 598.00	Dual Core Intel® Pentium® D 915, 2x2MB Cache, 2.8 GHz, 800MHz FSB 512MB DDR2, 533MHz, 1X512MB Single Ranked DIMMs 80GB, SAT, 3.5-inch, 7.2K RPM Hard Drive 3 yr. BASIC SUPPORT: SX10 HW-Only, SX10 NBD Online	
2. Dell Rack Mount Server - PowerEdge 1950	\$1,599.00	Dual Processor Capable for Quad Core 1.60GHz, 1066MHz FSB 1GB 667MHz (2x512MB), Single Ranked Performance DIMMs 80GB, SATA, 3.5-inch, 7.2K RPM Hard Drive 3yr. BASIC SUPPORT: SX10 HW-Only, SX10 NBD Online	
		Rack Mount Kit for PowerEdge 1950 \$249.00	Rack Mounting Equipment
a. 2 Viewcast Spyre-230 Video Capture Card @ \$320 each	\$640.00	b. Upgrade to simultaneous multiple live streams with on demand capture @ 225.00 each	Other Hardware (per server)
		Microsoft Windows Server 2003, Web Edition @ \$349.00 each	Operating System (per server)
		\$698.00	
		\$3,925.00	Software
			GACONTRACTMRSWAGTRK.WPD August 7, 2007 35

EXHIBIT "B"

<b>Hardware and Software Installation</b>		<b>Operating System Installation, Swagit EASE</b>	<b>Encoder Software Installation, System Burn-in</b>
\$360.00			
<b>Web Site Integration</b>		<b>Custom Video Library Design</b>	<b>Custom Player Design</b>
\$ 285.00			
<b>Installation/Setup Fees</b>		<b>Onsite (2 hours)</b>	<b>Remote (2 hours)</b>
\$ 432.00			
<b>Monthly Recurring Costs</b>			
\$1,500.00			
<b>Swagit Managed Services</b>		<b>Package 2 - Up to 10 meetings per month</b>	<b>Including LIVE and Video Podcasting</b>
\$ 70.00			
<b>Professional Services</b>		<b>Videos Encoding/Hocoding (hourly)</b>	<b>Custom Software Development (hourly)</b>
\$ 85.00			
<b>Swagit</b>		<b>Video Editing/Encoding (hourly)</b>	<b>Web Design (hourly)</b>
\$ 120.00			

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchaser as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

6. In the event of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessor may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

5. The contractor shall furnish all information and reports required by the Secretary of Labor, or pursuant to Executive Order No. 11246, and by the rules, regulations, or lessor will furnish all information and reports required by books, records, and accounts by the appropriate City and Federal Agency responsible for enforcement of all applicable laws, regulations, and orders of the Secretary of Labor, or lessor's non-compliance with the non-discriminatory clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessor may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

4. The contractor, subcontractor, vendor, supplier, or lessor will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

3. The contractor, subcontractor, vendor, supplier, or lessor will send to each labor union or representatives of workers with which it has a collective bargaining agreement the said labor union or other contractor's and subcontractor's agency contracting officer advising the said labor union or workers' representative of the contractor's and subcontractor's committments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

2. The contractor, subcontractor, vendor, supplier, or lessor states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

1. The contractor, subcontractor, vendor, supplier, or lessor employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; promotion or transfer; recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; demotion; relocation; reorganization; apprenticeship; layoff or termination; notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

TitleSignatureContractor NameDate

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in nonaward or termination of the contract by the City of Houston.

Order No. 1-31 is a material condition of the contract with the City of Houston.

4. Submit semi-annual Drug Policy Compliance Declarations.

3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.

2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Amended Policy on Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).

Contractor is aware of and by the time the contract is awarded will be bound by and agree to follow the requirements before the City issues a notice to proceed; approve alternate safety impact positions for company employee positions, and to comply with the following requirements before the City makes this Agreement, I affirm that the it may enter into with the City of Houston, and that by making this Agreement, I have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts

(Name of Company) \_\_\_\_\_  
(Contractor)

I, \_\_\_\_\_ (Name) (Print/Type) \_\_\_\_\_ (Title) \_\_\_\_\_  
as an owner or officer of

**DRUG POLICY COMPLIANCE AGREEMENT  
EXHIBIT "D"**

**DRUG POLICY COMPLIANCE DECLARATION**  
**EXHIBIT "E"**

<p>This reporting period covers the preceding 6 months from _____ to _____, 20_____.          have personal knowledge and full authority to make the following declarations:          (Name) _____ (Print/Type) _____ (Title) _____          as an owner or officer of          A written Drug Free Workplace Policy has been implemented and employees          notified. The policy meets the criteria established by the Mayor's Amended Policy on          Drug Detection and Deterrence (Mayor's Policy).          Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No.          1-31. Employees have been notified of such procedures.          Collection/testing has been conducted in compliance with federal Health and          Human Services (HHS) guidelines.          Appropriate safety impact positions have been designated for employee          positions performing on the City of Houston contract. The number of employees in          safety impact positions during this reporting period is _____.</p>	<p>Initials _____          Written drug testing procedures have been implemented in conformity with the          Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No.          1-31. Employees have been notified of such procedures.          Collection/testing has been conducted in compliance with federal Health and          Human Services (HHS) guidelines.          Appropriate safety impact positions have been designated for employee          positions performing on the City of Houston contract. The number of employees in          safety impact positions during this reporting period is _____.</p>	<p>Initials _____          From _____ (Start date) to _____ (End date) the following test has occurred  <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 2px;">Number Employees</th> <th style="text-align: left; padding: 2px;">Reasonable Suspicion</th> <th style="text-align: left; padding: 2px;">Post Accident</th> <th style="text-align: left; padding: 2px;">Total</th> </tr> </thead> <tbody> <tr> <td style="text-align: left; padding: 2px;">Tested</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> </tr> <tr> <td style="text-align: left; padding: 2px;">Number Employees</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> </tr> <tr> <td style="text-align: left; padding: 2px;">Positive Test</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> </tr> <tr> <td style="text-align: left; padding: 2px;">Positive Employees</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> </tr> <tr> <td style="text-align: left; padding: 2px;">Positive Employees</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> </tr> <tr> <td style="text-align: left; padding: 2px;">Positive Employees</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> </tr> <tr> <td style="text-align: left; padding: 2px;">Positive Employees</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> <td style="text-align: left; padding: 2px;">_____</td> </tr> </tbody> </table> </p>	Number Employees	Reasonable Suspicion	Post Accident	Total	Tested	_____	_____	_____	Number Employees	_____	_____	_____	Positive Test	_____	_____	_____	Positive Employees	_____	_____	_____	Positive Employees	_____	_____	_____	Positive Employees	_____	_____	_____	Positive Employees	_____	_____	_____
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Positive Employees	_____	_____	_____																															

Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.  
Initials \_\_\_\_\_  
I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.  
Initials \_\_\_\_\_  
I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date) \_\_\_\_\_  
(Type or Printed Name) \_\_\_\_\_  
(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_

(Title) Brian Hall  
 (Signature) Brian Hall  
 (Typed or Printed Name) BRIAN HALL (Date) 8/7/2007

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

Employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing Safety Manager have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no

as an owner or officer of Swing, P. LLC (Name of Company) (Contractor)  
 (Title) P. Hall (Name) BRIAN HALL

IN PERFORMANCE OF A CITY CONTRACT  
 OF NO SAFETY IMPACT POSITIONS  
 CONTRACTOR'S CERTIFICATION

EXHIBIT "F"